



Appeal Decision

Site visit made on 2 September 2024

by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2024

Appeal Ref: APP/V4630/W/24/3342254

59-61 Wednesbury Road, Walsall WS1 4JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr G Dillon on behalf of Keystone Homes Ltd against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 22/0381.
 - The development is the change of use of Industrial (E) to Residential (C3) to deliver 11 self-contained apartments assisted living with 2 rooms for staff for 24/7 staffing.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use of Industrial (E) to Residential (C3) to deliver 11 self-contained apartments assisted living with 2 rooms for staff for 24/7 staffing at 59-61 Wednesbury Road, Walsall WS1 4JL in accordance with the terms of the application, Ref 22/0381 and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (2023) (the Framework). The consultation and draft Framework do not constitute Government policy or guidance. However, they are capable of being material considerations in appeals. Notwithstanding this, in relation to this appeal the aims of both sets of policies are similar. No party would be prejudiced or caused any injustice by me proceeding with the appeal in light of the consultation.
3. I understand that due to a reduction in units the description of development changed from that stated on the application form. In the interests of clarity, I consider that the amended description accurately describes the appeal scheme and accordingly I have adopted an amended description in the heading above.

Main Issues

4. The main issues in this appeal are the effect of the proposed development on:
 - (i) the living conditions of future occupiers;
 - (ii) living conditions of adjoining and nearby occupiers in respect of increased anti-social behaviour and fear of crime;

- (ii) the highway network; and
- (iii) accessibility.

Reasons

Living Conditions Future Occupiers

5. The Council cite inadequate internal living space for flats 5, 10 and 11 in reason for refusal No. 1. The Council confirm in the Committee Report that Walsall Council do not have adopted space standards in which to assess the appropriateness of flat sizes, nevertheless, the Council confirm in the Committee Report that they use National Minimum Space Standards as a guide for residential development.
6. Flat 5 meets the requirements of the Technical housing standards – nationally described space standards (2015) (NDSS). Flat 10 has a shortfall of gross internal floor areas (GIFA), there is however dispute as to the level of occupation between parties. The appellant contends it is a 1 person unit although a double bed is detailed on the plans.
7. The appellant confirms that Flat 11 a 2 bedroom flat which shows double beds in each bedroom would be occupied by 1 person per bedroom. The appellant contends that the NDSS do not have a standard relating to a 2 bedroom 2 person unit. Notwithstanding this Flat 11 comprises 45.5sqm GIFA, the NDSS confirmed a 1b2p unit requires 50sqm GIFA, even for a 2 person 1 bedroom flat the space standards are not achieved.
8. The Council do not have adopted space standards for residential development, whilst the NDSS is used as guidelines the Council's Committee Report confirmed that whilst some units were smaller than the space standards, on balance, it was considered the flats would get sufficient natural light and have appropriate amenities to ensure sufficient quality of life for the occupants. I do not disagree.
9. Appendix D of Designing Walsall's Supplementary Planning Document (Designing Walsall's SPD) states that 20sqm of useable garden space per dwelling is required, where there is communal provision. The proposed development does not comply with the Designing Walsall's SPD. Notwithstanding this the proposed development comprises mainly 1 bedroom units as such are unlikely to comprise families which generally require large outdoor space. I also note that the site is located within a short distance from public open space.
10. Policy LC1(d) of the Walsall Unitary Development Plan (2005) (the UDP) seeks residential developments to make financial or other contributions which will enable the provision of new, or the improvement of existing, urban open spaces. The Committee Report highlights the amount of developer contribution required, and whilst this report indicates that the figure has been agreed by the appellant, I have not be provided with a mechanism to secure this contribution with the appeal documents.
11. The Urban Open Space Supplementary Planning Document (2006) confirms that there could be reasons to waive or alter the required contribution in respect of any particular development however the onus would be on the

developer to justify it. I have not been provided with substantive evidence to confirm why the contribution should be waived.

12. Whilst the proposed development would provide sufficient indoor living space, I find that the appellant has failed to provide a mechanism to secure the open space contribution (i.e. legal agreement) or demonstrate that the contribution is not required in this instance. On this basis the proposed development would harm the living conditions of future occupiers.
13. There is conflict with Policies LC1, GP2 and ENV32 of the UDP and Policies CSP4 and ENV3 of the Black Country Core Strategy (2011) (the Core Strategy) which amongst other things seeks to ensure developments provide suitable accommodation for future residents and also protect and enhance open spaces.
14. There is conflict with the Framework which seeks to ensure developments have high standards of amenity for existing and future users.

Anti-social Behaviour & Fear of Crime

15. The Framework at paragraph 137(f) emphasises the importance of creating places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
16. I understand that this proposal is for assisted living flats for vulnerable adults who require support to retain their independence in physical and emotional needs. I have taken into consideration the fear of crime expressed in the representations received and by the Council. I note, that the facility would be managed by staff during both the day and the night and that security measures including CCTV, would be provided.
17. The Council has drawn my attention to the comments from West Midlands Police in terms of a site in Birmingham operated by Aspire Supported Living and issues experienced. Aspire Supported Living CIC are referenced in the Planning Statement, Design and Access Statement and a supporting letter has been provided by them relating to the proposed development. Notwithstanding this I have no substantive evidence before me relating to the details of the Birmingham property including how it operates to enable a comparison between it and the appeal site.
18. Although the fear of crime and anti-social behaviour are material considerations, there must be some reasonable evidential basis for that fear. In this case, whilst mindful of the concerns put to me by interested parties, there is no substantive evidence before me to demonstrate that the proposed use would give rise to anti-social behaviour or criminal activity.
19. I am therefore satisfied that the fear of crime would not undermine the quality of life in the local community. I find there is no harm to the living conditions of adjoining and nearby occupiers in respect of increased anti-social behaviour and fear of crime.
20. There is no conflict with Policies GP2 and ENV32 of the UDP and Policies CSP4, ENV3 of the Core Strategy which seeks amongst other things to ensure community safety and security.

21. There is no conflict with the Framework which seeks to ensure developments do not undermine the quality of life or community cohesion and resilience.

Highway Network

22. The proposed development would provide two off-street parking spaces to the front of the property and one additional car parking space can be provided over the dropped kerb to serve the property.
23. The Council raise concern that waste and storage bins would lead to potential conflict between waste movement, storage and provision of the off-street parking spaces. The plans detail that waste storage would be located behind a gate within the courtyard of the development. A waste management strategy has been provided which seeks to mitigate any conflict between waste storage and collection with the off-street parking provision. This could be controlled by the imposition of a planning condition.
24. During my site visit I observed that Wednesbury Road was busy and that on-street parking opportunities were limited. Notwithstanding this I am also conscious that the building has been used for industrial use and as such could generate a significant amount of highway movement and parking pressures.
25. The proposed occupiers of the development are unlikely to have vehicles, and I note that the site is within a sustainable location with access to public transport links. The Highway Authority considers the development would not have an unacceptable impact on road safety or have severe cumulative impacts on the operation of the road network and is acceptable. I agree.
26. I conclude that the proposed development would not harm highway safety. There is no conflict with Policy TRAN2 of the Core Strategy, Policy T4 of the Walsall Site Allocation Document (2019) (the SAD) and Policies GP2, ENV32, T7 and T13 of the UDP which seeks amongst other things to protect highway safety.
27. There is no conflict with the Framework which seeks to ensure developments have an acceptable impact on highway safety.

Accessibility

28. In terms of accessibility UDP Policy GP5 seeks to ensure that the needs of all sections of the community are taken into account. Policy GP6 of the UDP seeks to ensure that developments include good access for disabled people. Policy HC2 of the SAD requires that developments provide a satisfactory residential environment.
29. Standards for disabled people are set out in Building Regulations, it is not necessary for planning to duplicate these measures. However local planning authorities have the option to set additional technical requirements exceeding the minimum standards required by Building Regulations. I have not been provided with substantive evidence to demonstrate that additional technical requirements have been adopted.
30. I have no substantive evidence before me to convince me that the proposed development would create an inaccessible residential scheme.
31. There is no conflict with Policies GP5 and GP6 of the UDP and Policy HC2 of the SAD which amongst other things seek to create inclusive developments.

32. There is no conflict with the Framework which amongst other things seeks to ensure developments are safe and accessible.

Planning Balance

33. The Council confirm that they cannot currently demonstrate a five year supply of deliverable housing sites. In accordance with the Framework there is therefore a presumption in favour of allowing new residential development.
34. The proposal would result in benefits in terms of providing specialist housing, which could be delivered quickly, in a sustainable location. The proposal would also have economic benefits through the creation of employment opportunities during the construction phase of the development and spending in the local area by future occupiers.
35. Collectively these benefits attract weight in favour of the proposal, given the shortfall in housing delivery. The proposed development would also offer the opportunity to assist vulnerable people return to independent living.
36. Whilst I have found the proposed development would be satisfactory in terms of the living conditions of adjoining and nearby occupiers in respect of increased anti-social behaviour and fear of crime; the highway network; and accessibility. I have concluded harm in terms of the living conditions of future occupiers by virtue of the failure to provide a mechanism to secure the required contribution towards open space or demonstrate why this should be waived in this instance.
37. On balance, I consider that the harm identified which amounts to a financial sum of £8,489 as confirmed in the Council's Planning Committee Report and Appeal Statement would not significantly outweigh the benefits of the proposal.

Conclusion

38. For the above reasons I conclude that this appeal should be allowed.
39. I have imposed a standard condition relating to the commencement of development. I have included conditions specifying the relevant plans and use as this provides certainty.
40. I have imposed conditions relating to acoustic glazing, security measures and external lighting to protect the living conditions of future occupiers of the development.
41. I have imposed a condition relating to the provision of a cycle storage area and also boundary treatments which are shown on the plans submitted to ensure that the development provide security and safeguards the character and appearance of the area.
42. I have attached a condition requiring the provision and retention of the parking spaces in the interest of highway safety. Conditions relating to surface water drainage design and a waste management plan have been imposed to ensure a satisfactory form of development.

C Pipe

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - Location and Site Plan, drawing no. 2021-066-001
 - Proposed_First_and_Second_Floor_Plan_-_2021-066-006 Rev B 13_11_2023
 - Proposed_Front,_Rear_and_Side_Elevations_-_2022-066-007_REV_B_-_13-11-2023
 - Proposed_ground_Floor_-_2021-066-005.1_-_17-11-23
 - Proposed_Side_Elevation_Plan_-_2021-066-008_-_20-09-23
 - Noise Impact Assessment Report prepared by ATSPACE
 - Aspire Supporting Letter
3. Notwithstanding the details submitted, the development hereby permitted shall not be operated or used otherwise than for assisted living accommodation.
4. (a) No development above damp proof course level shall commence until details of acoustic glazing and acoustic passive and mechanical ventilation in accordance with the minimum sound reduction performance (DnTw) specified in the 'Noise Impact Assessment dated 20 February 2022' shall be submitted in writing to and approved in writing by the Local Planning Authority.
(b) The Applicant shall implement the agreed acoustic mitigation measures.
(c) Prior to the occupation of the development hereby permitted a written validation document that confirms implementation of the agreed mitigation measures shall be submitted in writing to and approved in writing by the Local Planning Authority.
5. Notwithstanding the details provided and prior to the commencement of the development hereby permitted no development shall commence until the detailed surface water drainage design has been submitted to and approved in writing by the Local Planning Authority. The information must include
 - i. contact details and address details;
 - ii. details of planned activities and frequencies of required maintenance; and
 - iii. maintenance of the permeable amenity space.The development shall thereafter proceed in accordance with the approved details and be retained for the lifetime of the development.
6. (a) Notwithstanding the details provided and prior to the commencement of building operations above damp-proof course of the development hereby permitted details of the proposed boundary treatment of the site, including heights, positions and extents, materials and finishes of all walls, fences, gates, or other means of enclosure, shall be submitted in writing to and approved in writing by the Local Planning Authority. The submitted details shall include all internal site divisions in addition to the perimeter boundary treatments and all gates shall be designed and installed so they cannot open outwards onto a highway.

(b). The development shall not be carried out otherwise than in accordance with the approved schedule and the boundary treatments shall thereafter be retained for the lifetime of the development.

(c) The development hereby permitted shall not be occupied until all boundary treatments have been erected in accordance with the approved schedule.

7. No external lighting shall be installed on the site otherwise than in accordance with the approved details.
8. Prior to the first occupation of the development hereby permitted the two parking spaces to the forecourt shall be fully implemented, being clearly demarcated on the ground and shall thereafter be retained and used for no other purpose for the lifetime of the development.
9. Notwithstanding the details provided and prior to the development first coming into operation, details of a covered and illuminated cycle shelter with facilities for locking shall be submitted to and approved in writing by the Local Planning Authority. The cycle shelter shall be fully implemented in accordance with the approved details prior to the first occupation of the development and used for no other purpose for the lifetime of the development.
10. Notwithstanding the details submitted and prior to the development first coming into operation full details of site security measures shall be submitted to and approved in writing by the Local Planning Authority. The security measures shall be fully implemented in accordance with the approved details. The security measures shall thereafter be retained for the lifetime of the development.
11. Prior to the first occupation of the development hereby permitted a waste management plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter proceed in accordance with the approved details and be retained for the lifetime of the development.